* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : April 4, 2007
Date of decision : May 2, 2007

\+ W.P.(C) 13427/2006 & CMs 10380-81/2006

\# DHARAMPAL SHARMA ..... Petitioner
! Through Mr. Sanjay Parikh with
Mr. A.K. Mishra & Mr. J. Sahni, Advocates

versus

$ DEPUTY HEALTH OFFICER S.ZONE MCD ..... Respondent
^ Through Ms. Smita Shankar, Advocate

with

W.P.(C) 13461/2006 & C Ms 10406-07/2006

SIMMI SHARMA ..... Petitioner
Through Mr. Sanjay Parikh with
Mr. A.K. Mishra & Mr. J. Sahni, Advocates

versus

DEPUTY HEALTH OFFICER S.ZONE MCD ..... Respondent
Through Ms. Smita Shankar, Advocate

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

JUDGMENT

:Dr. S.Muralidhar, J.

1. These two writ petitions involve common question and, therefore, are being disposed of by this common judgment.

2. Shri Dharampal Sharma, the petitioner in W.P.(C) No. 13427/2006 states that he has been running a water cooling plant in the Mehrauli area in his own plot No. 248, Ward No.6 since 1988. He divided the businesses on the plot: An ice-cream factory on Plot 248/5B was given to his son late Shri Deepak Kumar Sharma which is

now being run by his widow Smt. Simmi Sharma, the petitioner in the companion W.P.(C) No. 13461/2006. The water cooling plant continued to be run by the petitioner Shri Dharampal Sharma on plot No. 248/5A. It is claimed that both units are permissible household activities and non-polluting and non-hazardous in nature.

3. The petitions further state that when the Municipal Corporation of Delhi ('MCD') commenced a scheme in 1990 for registration of such units, the petitioner applied and obtained a trade licence on 1.2.1995. The petitioner states that the trade licence fee was paid for the period 1.4.1990 onwards. It is claimed that the trade licence was regularly renewed by the MCD in terms of the ad hoc registration policy of 1990 and Resolution No. 560 dated 15.3.2000.

4. The petitioners state that from 2003 onwards, the MCD kept issuing various notices compelling the units to shut down. These notices were challenged by the petitioners in this Court in various writ petitions each of which came to be allowed. It is stated that by an order dated 30.1.2006 in WP(C) No. 14187/2006 this Court referred to the orders passed by the Hon'ble Supreme Court in ***M.C. Mehta vs. Union of India*** *(*2004) 5 SCALE 405, and directed that the Commissioner, MCD to refer the issue of the renewal of petitioners' licences to the Monitoring Committee constituted in terms of Direction no. 8 in para 17 of that judgment. The Monitoring Committee was asked to take a decision whether a water colling plant and an ice-cream factory are permissible activities from residential areas.

5. Pursuant to the directions issued by this Court on 30.1.2006, the petitioners' applications for renewal were referred to the Monitoring

Committee. In its 11th meeting on 22.6.2006, the Monitoring Committee considered the issue and concluded that only those ice-cream factories and water cooling plants that have come up in residential/non-conforming areas in Delhi on or after 1.8.1990 shall be closed. Consequent upon the decision of the Monitoring Committee, a show cause notice was issued to the petitioners by the MCD which was replied to by them on 31.7.2006. By an order dated 5.8.2006, petitioners were informed by the MCD that the replies given by them were not satisfactory and they were directed to forthwith stop operations. By a further communication dated 7.8.2006, the petitioners were informed that the ad hoc registration granted to their respective units, stood cancelled. The units were sealed by an order dated 21.8.2006.

6. Challenging the above decision of the Monitoring Committee and the consequential orders dated 5.8.2006, 7.8.2006 and 21.8.2006 of the MCD, the petitioners filed the present writ petitions. A further prayer is for a direction to the MCD to either direct the Monitoring Committee to reconsider the issue and consequently direct the MCD to renew petitioner's licence or, in the alternative, direct the MCD to allot to each of the petitioners a similar plot in a conforming area after giving them time to shift. By an interim order dated 28.8.2006, this Court directed the de-sealing of the premises subject to the petitioners filing undertakings not to commence business activities therein.

7. In each of the petitions it is claimed that the unit has been running since 1988 i.e. before the deadline of 1.8.1990 set by the Monitoring Committee, and therefore the water cooling plant and the ice-cream factory should be permitted to continue functioning in

terms of the orders of the Hon'ble Supreme Court.

8. In the reply filed by the MCD, it is pointed out that in the application filed by the petitioners for renewal of registration, it was indicated by the petitioner himself here that the water cooling plant and the ice-cream factory were established in 1991. Acting on this statement, respondents cancelled registration of the plant in favour of the petitioner no.1 by an order dated 7.8.2006. On the undertaking of the petitioner Shri Dharampal Sharma that he would not commece business activities in the form of the ice cream factory and the water cooling plant, they were desealed on 1.9.2006. It is pointed out that the ice cream factory and water cooling plant are operating in a residential/non-conforming areas; that such business activities are not included in list A or A1, and, therefore, were impermissible under the Master Plan for Delhi ('MPD').

9. Appearing for the petitioner, Mr. Sanjay Parikh, Advocate submits that the units have been functioning since 1988; that they had already obtained trade licences and, therefore, the protection granted by the Hon'ble Supreme Court to the pre - 1.8.1990 licensees/registrants, should be available to these petitioners as well. Without prejudice to these contentions, it is stated that Monitoring Committee erred in observing that the activity was commercial. It is maintained that these are, in fact, household industries and should have been treated as such. Mr. Parikh criticized the logic of the reasoning of the Monitoring Committee and submitted that if such an activity could be permitted in the local shopping centre then certainly it could also be permitted in a residential area.

10. Appearing for the respondent MCD, Ms. Smita Shankar,

Advocate pointed out that records of the MCD clearly showed that the activities in question began only in 1991 according to the petitioners Shri Dharampal Sharma's own showing. The record of the MCD was also produced before the Court. It was found that in fact, the application by the petitioner did mention 1991 as the date of commencement of the activity.

11. The first question that arises is whether the petitioners are justified in their contentions that running of water cooling plant or ice-cream factory is an activity that can be carried on in residential areas and that the classification of such activity as industry is not justified.

12. The decision of the Hon'ble Supreme Court in ***M.C. Mehta*** (supra) deals with the issue in paras 57 and 58 of the judgment which read as under:-

> "57. The position in respect of household industries which are permissible, the question of the same not being carried on in residential/con-conforming area would not arise. The difficulty arises in carrying on of such activity of household industry which is not permissible. The State government sought expansion of 'A' category industries. The government of India has approved only 6 out of list of 41 industries. In case, the remaining are not approved, impermissible 'A' category industrial units shall also have to stop functioning. It is imperative for the Central Government to expeditiously decide this issue one way or the other. In short, permissible household industry activity can go on and impermissible activity has to stop.
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> 58. ..... In regard to other illegal industrial units, the suggestion put forth on behalf of the Delhi

> government is that immediate directions for closure/shifting of only those industrial units shall be made which were set up after 31st December, 1996 as under the Order dated 19th April, 1996, the industrial activity in residential/non-conforming areas was directed to be closed after 31st December, 1996. We, however, see no justification for continuance of the illegal and unauthorized industrial activity in residential/non-conforming areas which commenced after 1st August, 1990. It would also apply to industries in categories 'B' to 'F'."

13. The above decision was taken note of by this Court in its order dated 30.1.2006 in the petitioners' Writ Petition (C) No. 14187/2005. In regard to the observation in para 59 of the judgment of the Supreme Court that the proposal for the additional 41 items "for being placed in category A has been approved by the DDA and the matter is pending with the Government of India", this Court observed in para 29 of its judgment dated 30.1.2006 that "neither party has brought on record as to what category of activities are listed in the list of 41 activities which their Lordships of the Supreme Court noted were intended to be included in Category 'A'." In para 32, this Court observed that "activities listed in Category 'A' have a common characteristic of being non-polluting industries. A water cooling plant and an ice-cream plant is, prima facie, a non-polluting plant, for the reason the two activities do not generate any waste. With the aid of colling/chilling equipment, milk in the case of ice-cream and water in the case of a water cooling plant, are chilled. In the case of an ice-cream unit, some mixing of foodstuffs would also take place."

14. This Court was informed that "water cooling plants were operating under the valid permission from the local shopping centers". In para 38, while referring these cases to the Monitoring

Committee, this Court required the said Committee to decide on the following issues:-

> "1. To decide the issue in light of the decision of this Court dated 31.8.2004 in WP(C) No. 6857/2004 and 6858/2004 pertaining to, whether petitioners are employing more than 10 workers and whether the premises qualifies to be labelled as a factory under the Factories Act, 1948.
> 2. The monitoring committee would decide the issue, after verifying which activities have been further authorized by the Central Government to be included as part of Group 'A' to the Schedule to the Master Plan for Delhi as permissible activities from residential premises as household industries.
> 3. In light of the permissible activities from residential areas as household industries, decision would be taken whether a water cooling plant and an ice-cream factory are permissible activities from residential areas."

15.The following further consequential directions were issued:

> "If decision is that the activities are permissible, MCD would proceed ahead to renew the licenses. If decision of the committee is that the activities are not permissible activities in residential areas, it would be open to the MCD to reject renewal of the licenses sought. In said eventuality, MCD would ensure that no water cooling plant and an ice-cream factory operates from areas other than industrial areas and to bring parity, would revoke licenses issued to persons for operating water cooling plants and ice-cream units from areas other than notified industrial areas. Needless to state, said action would be after notice to said persons."

16. When the matter went before the Monitoring Committee, a good deal of discussion took place. The representatives of the DDA

informed the Committee that in the draft MPD 2021, the activities in question were covered under the household category. The representatives also appear to have informed the Monitoring Committee that such activities (water cooling plant and ice-cream units) involved use of gases in closed chambers and, therefore, could be permitted in local commercial areas. Thereafter, the Monitoring Committee observed as under:

> "7. The representative of the DDA informed that as per draft MPD 2021, industries have been categorized into two categories namely (i) list of industries permissible in residential areas as household industries subject to their functioning within prescribed parameters; and)ii) industries which would not be allowed to be established in the NCT of Delhi. It was further informed that the activity of ice cream and water cooling plants are not covered in any of the aforementioned two categories.
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> 8. After detailed deliberations the consensus was that since the process of water cooling and ice cream manufacturing are more or less the same, the activity of water colling plant may also be permitted in local commercial area subject to their functioning within the prescribed parameters as detailed above.
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> 9. The attention of the Monitoring Committee was also drawn to the Hon'ble Supreme Court's order dated 7the May, 2004 delivered in the matter of closure/shifting of unauthorized industrial activities in Delhi in residential area in Writ Petition (Civil) No. 4677 of 1985 titled "M.C. Mehta Vs. Union of India & Others" which reads as under:-
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> (1) "All Industrial units that have come up in residential/non-conforming areas in Delhi on or after 1st August, 1990 shall close down and stop operating as per the following schedule:-
>
> (a) Industrial unites pertaining to extensive industries ('F' category) within a period of four months;

(b) Industrial units pertaining to light and service industries (category 'B' to 'F') within five months.

(c) Impermissible household industries (category 'A') within six months.

10. Accordingly it was decided that only those ice cream factories water cooling plants, that have come up in residential/non-conforming areas in Delhi on or after 1st August, 1990 shall be closed, and MCD may take further action on the above lines in terms of the order dated 30.1.2006 of the Hon'ble High Court."

17. It appears to this Court that the decision taken by the Monitoring Committee not to permit the activity in question in residential areas is based on relevant considerations. This Court has not been shown anything in the decision which could be termed as being perverse. This being a matter of a technical nature, Court will not like to substitute its view for that of the Monitoring Committee that such activities ought not to be permitted in residential areas.

18. The only question that remains to be considered is whether these two petitioners were, in fact, operating earlier than 1.8.1990. The application form submitted by the petitioner Shri Dharampal Sharma at the time of registration, has been produced by the counsel for the MCD and also seen by the counsel for the petitioner. It contains a very clear statement by the petitioner Shri Dharampal Sharma that the unit started functioning in 1991. This being the factual position, counsel for the petitioner was unable to deny that on their own showing, the petitioners had stated that they had commenced operations in 1991. In that view of the matter, the petitioners do not stand to benefit by the limited protection given by

the Hon'ble Supreme Court to such of those units which have been functioning prior to 1.8.1990.

19. Viewed from any angle, therefore, the petitioners have failed to make out a case for interference by the Court under Article 226 of the Constitution of India. The writ petitions are dismissed, with no orders as to costs. The interim orders stand vacated and the applications are disposed of.

May 2, 2007 **(S. Muralidhar)**
raj **Judge**